UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

The Seneca-Cayuga Tribe of Oklahoma, a federally recognized Indian Tribe,

Plaintiff,

-v.-

5:03-CV-00690 (NPM)

Town of Aurelius, New York, Town of Montezuma, New York, County of Cayuga, New York, George E. Pataki, as Governor of the State of New York, Eliot Spitzer, as Attorney General of the State of New York, and Cayuga Indian Nation of New York,

Defendants.

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Neal P. McCurn, Senior District Judge

MEMORANDUM, DECISION AND ORDER

I. INTRODUCTION

Plaintiff, the Seneca-Cayuga Tribe of Oklahoma, a federally recognized Indian Tribe,[1] ("the Tribe") filed this suit against defendants, Town of Aurelius, New York, Town of Montezuma, New York and County of Cayuga, New York ("the Municipal Defendants") seeking declaratory and injunctive relief regarding the nature of use and taxation of property plaintiff owns within defendants'

[1] See 68 Fed. Reg. 68,180 (Dec. 5, 2003).

municipal boundaries ("the Property"). Since commencement of this action, Eliot Spitzer, as Attorney General of the State of New York and George E. Pataki, as Governor of the State of New York ("the State Defendants") as well as the Cayuga Indian Nation of New York ("the Nation") have successfully intervened as defendants. The court has heard oral argument regarding a motion by the Tribe and cross motions by the Municipal and State Defendants as well as the Nation for a preliminary injunction, and pursuant to Fed. R. Civ. P. 65(a)(2), has ordered the advancement and consolidation of a trial on the merits with said motions.

An issue was raised by all defendants regarding whether the Tribe may assert the rights of the historic Cayuga Nation of Indians that treated with the United States on November 11, 1794 at Canandaigua, New York. Because a conclusion adverse to the Tribe on this issue would be dispositive of the entire action, the court directed the parties to conduct discovery limited to that issue and oral argument was heard regarding the results thereof in Syracuse, New York on March 11, 2004. Decision was reserved.

II. BACKGROUND

The Property is located within the 64,015 acres ("the subject land" or "the claim area") which were the subject of extensive land claim litigation ("the Land Claim") involving, among others, all of the parties to the present action.[2] See Cayuga Indian Nation of New York v. Pataki, et al., 188 F.Supp.2d 223 (N.D.N.Y. 2002) ("Cayuga XVII"). The Land Claim plaintiffs sought a declaration of their

[2] The Cayuga Indian Nation of New York, intervenor-defendant to this action, was the original plaintiff in the Land Claim. The sole plaintiff in this action, the Seneca-Cayuga Tribe of Oklahoma, was intervenor-plaintiff in the Land Claim. See Cayuga Indian Nation of New York v. Carey, Nos. 80-CV-930, 80-CV-960, 1981 U.S. Dist. LEXIS 15576 (N.D.N.Y. Nov. 9, 1981). The remaining defendants to the present action were also Land Claim defendants.

ownership of and right to possess the subject land as well as monetary relief, based on certain land conveyances which they alleged violated the Nonintercourse Act, now codified at 25 U.S.C. § 177. Over the course of the decades-long litigation, this court concluded that the conveyances were in fact violative of the Nonintercourse Act, see Cayuga Indian Nation of New York v. Cuomo, 730 F.Supp. 485, 493 (N.D.N.Y. 1990) ("Cayuga III"), and that plaintiffs held reserved title to the subject land, see Cayuga Indian Nation of New York v. Cuomo, 758 F.Supp. 107, 109 n.1, 115 (N.D.N.Y. 1991) ("Cayuga IV"). Although the court later eliminated ejectment as a remedy, see Cayuga Indian Nation of New York v. Cuomo, Nos. 80-CV-930, 80-CV-960, 1999 WL 509442, at *30 (N.D.N.Y. July 1, 1999) ("Cayuga X"), a jury awarded plaintiffs $36,911,672.62 in damages, and the court thereafter awarded $211,000,326.80 in prejudgment interest, see Cayuga Indian Nation of New York v. Pataki, 165 F.Supp.2d 266, 366 (N.D.N.Y. 2001) ("Cayuga XVI"). An appeal to the Court of Appeals for the Second Circuit in the Land Claim is currently pending. See Cayuga Indian Nation of New York v. Pataki, 02-CV-6111 (2d Cir.).

In 2002, the Tribe purchased 229 acres[3] of land within the defendant Towns of Aurelius and Montezuma, County of Cayuga, New York ("the Property"). After the Tribe began construction of a "Class II" gaming casino[4] on the Property,

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[3] The Property is identified by parcel numbers 98.00-1-35, 105.10-1-2, 105.10-1-6, and 105.10-1-7. See Compl. ¶ 29, Ex. A.

[4] Pursuant to the Indian Gaming Regulatory Act ("IGRA"), there are three types of gambling which correspond with different levels of state regulation. See 25 U.S.C. §§ 2701-2721 (2003). "Class I gaming includes social games for nominal prizes. 25 U.S.C. § 2703(6). This class of gaming is within the exclusive control of the tribes and is exempt from state control and IGRA regulations or prohibitions. Class II gaming is more explicitly defined as including bingo, cards and lotto. A tribe may engage in, or license and regulate, Class II gaming on Indian

the Municipal Defendants attempted to enforce upon it the zoning laws of the Towns of Aurelius and Montezuma by threatening to issue the Tribe a "stop work order" and an "appearance ticket" if it failed to comply therewith. See Compl. ¶¶ 33-34. Also, defendants County of Cayuga and Town of Aurelius issued a property tax bill to the Tribe in February 2003, and as of the commencement of this action, the Tribe had information which led it to believe the Town of Montezuma intended to issue it a property tax bill as well. See Compl. ¶ 36.

On June 3, 2003 the Tribe commenced the present action against the Municipal Defendants seeking a declaration that the Property is Indian Country within the definition of 18 U.S.C. § 1151(a), that the Tribe has sovereign jurisdiction of the Property, and that Municipal Defendants may not enforce their laws, such as zoning or taxation, against the Tribe or the Property. The Tribe likewise seeks an injunction preventing any attempts by Municipal Defendants to enforce their zoning, land use or taxation laws against the Tribe or the Property. Thereafter, Municipal Defendants filed a counterclaim seeking, among other things, a declaration that the Property is not Indian Country, an injunction enjoining the Tribe from further construction on the Property without complying with local zoning laws and an injunction enjoining the Tribe from refusing to pay property taxes. Municipal Defendants also set forth a demand for a jury trial.

On July 30, 2003, the Town of Aurelius ("the Town") issued a "stop work order" to a representative of the Tribe and to the Tribe's contractor and sub-

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lands so long as 'such Indian gaming' is located within a State that permits such gaming, such gaming is not prohibited by federal law, and the governing body of the Indian tribe adopts an ordinance or resolution that is approved by the Chairman of the National Indian Gaming Commission. See 25 U.S.C. § 2710(b)(1). Class III gaming is defined under IGRA as simply 'all forms of gaming that are not Class I gaming or Class II gaming.' 25 U.S.C. § 2703(8)." State of New York v. Oneida Indian Nation of New York, 78 F.Supp.2d 49, 51-52 (N.D.N.Y. 1999).

contractor. See Aff. of Glenn M. Feldman, July 31, 2003, Exs. A, B. In response, the Tribe filed a motion for a preliminary injunction seeking an order enjoining Municipal Defendants from applying or enforcing their zoning and land use laws against it. The Tribe also requested a Temporary Restraining Order ("TRO") regarding same, which the court thereafter denied.

According to Municipal Defendants, the Tribe continued construction activities on the Property. In response, on August 8, 2003 the Town filed an action in the New York State Supreme Court for the County of Cayuga ("the State court") seeking a declaration that the actions of the Tribe as well as its contractor and subcontractor violated the Town's zoning laws and an order enjoining them from further construction activities at the Property without first complying with said laws. See Aff. of Dwight A. Healy, Aug. 15, 2003, Ex. 5. The Town also sought and received a TRO and an Order to Show Cause from the State court pending a hearing against the Tribe in that action. When the Tribe continued construction activities in violation of the TRO, the Town sought, and received, an Order to Show Cause why the Tribe should not be held in contempt for violating the TRO. The Tribe removed the State court action to this court based on federal question jurisdiction pursuant to 28 U.S.C. § 1331. See Town of Aurelius v. Seneca-Cayuga Tribe of Oklahoma, et al., 03-CV-987 (N.D.N.Y.).

On August 18, 2003, the Municipal Defendants filed a cross motion for a preliminary injunction against the Tribe as well as three tribal leaders, Chief Leroy Howard, Chief Jay White Crow and Jerry Dilliner, seeking an order enjoining them from further construction activities on the Property. In the meantime, the State Defendants successfully intervened, filed an answer with counterclaims seeking declaratory and injunctive relief, and on August 21, 2003, filed a cross-

motion against the Tribe for a preliminary injunction.

On August 21, 2003, the court heard oral argument in the removal action, 03-CV-987, regarding a motion by the Town for remand to State court. The court granted the motion, holding it lacked subject matter jurisdiction. On that same day, the court issued a joint TRO enjoining the Tribe from further construction activities at the Property and enjoining the Municipal Defendants from applying or enforcing[5] their zoning or land use laws against the Tribe regarding their activities on the Property until a hearing on the Tribe's motion and the Municipal Defendants' cross motion for a preliminary injunction in this action on September 8, 2003.

At the September 8th hearing, the court ordered the advancement and consolidation of a trial on the merits with the pending motions pursuant to Fed. R. Civ. P. 65(a)(2), and scheduled a hearing for September 25, 2003 to hear proffers of evidence to be considered on the merits. The court also extended the TRO, with consent of the parties, until a decision is made on the merits. In the meantime, the Nation successfully intervened as a defendant and filed an answer with counterclaims for injunctive and declaratory relief. In light of same, the court notified all parties that at the upcoming hearing it would reconsider its decision to consolidate the motions with a trial on the merits and would also consider whether additional proof would be allowed regarding the injunctive relief sought, including historical proof as to the successorship status of the Tribe.

At the September 25th hearing, the court held that its decision to consolidate the motions with a trial on the merits would stand, and denied the

[5] The parties agreed that this language served to also enjoin the Town from taking any further action regarding its State court claims against the Tribe, its contractor, or subcontractor.

Municipal Defendants' demand for a jury. The court also determined to allow the parties to conduct discovery regarding the sole issue of whether the Tribe may assert the rights of the historic Cayuga Indian Nation that treated with the United States on November 11, 1794 at Canandaigua, New York.[6] Finally, the court continued the TRO, with the consent and agreement of all parties to maintain the status quo pending a hearing on the outcome of discovery. A schedule for discovery was set forth which allowed the parties ample time to retain experts, exchange the reports of said experts and conduct depositions of same regarding their respective reports, as well as time to exchange documents and interrogatories. On March 11, 2004, the court heard oral argument from all of the parties regarding the pending issue in light of the newly submitted evidence. Once again, the parties agreed to a continuation of the TRO to maintain the status quo pending an outcome on the merits of this case.

III. DISCUSSION

At the outset, it is important to note that the court's analysis herein will be confined to the narrow issue presently before it, to wit, whether the Tribe is a successor in interest to the historic Cayuga Indian Nation that treated with the United States at Canandaigua, New York on November 11, 1794. By the same token, this issue cannot be analyzed in a vacuum. The court simply cannot ignore the multiple decades of litigation that prefaced the present action. With this in

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[6] The court also notified the parties that if after consideration of the evidence submitted regarding this issue it finds in the affirmative regarding same, it will set a date at that time for completion of further discovery on the remaining issues of whether the Property is Indian Country pursuant to 18 U.S.C. § 1151(a), and if so, whether "exceptional circumstances" exist which would warrant the enforcement of state and local laws against the Tribe in relation to its activities on the Property. See New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 331-32, 103 S.Ct. 2378, 2385 (1983).

mind, the court will begin its analysis with a summary of the arguments presented regarding the Tribe's successorship.

One or all of defendants argue that (1) the rulings in the Land Claim are not dispositive of the issue of the Tribe's successorship status; (2) determinations of the Bureau of Indian Affairs (BIA) or the Department of Interior ("DOI") are not binding on this court and, in any event, the determinations made to date have not been based on comprehensive research; (3) the Tribe has received no benefits from the Treaty of Canandaigua, including treaty cloth and annuity payments, and therefore should not be deemed a successor to a signatory thereof; (4) pursuant to the successorship test set forth by the Court of Appeals for the Ninth Circuit in United States v. Washington[7] and its progeny, the Tribe is not a successor tribe to the historic Cayuga Indian Nation that treated with the United States at Canandaigua, New York in 1794, and (5) even if the court determines that the Tribe is a successor to a signatory of the 1794 Treaty, it relinquished its rights pursuant to that treaty when it accepted another reservation, first in Ohio and then in Oklahoma.

The Tribe, for its part, stresses foremost that the issue of its successorship was decided by this court in the Land Claim, and is therefore binding on this court in the present action. While familiarity with that protracted litigation is presumed, a discussion of the relevant rulings therein will properly define the parameters of the issue presently before the court. Initially though, a brief recitation of the historical events which prompted the Land Claim is in order.

A. The Land Claim

[7] 641 F.2d 1368 (9th Cir. 1981).

Both the Nation and the Tribe ("the Land Claim plaintiffs") claim to be successors in interest to the historic Cayuga Nation of the Six Nation Iroquois Confederacy[8] ("the Cayuga") that, they allege, occupied the Property since time immemorial. See Cayuga IV, 758 F.Supp. at 109, n.1. "During and after the American Revolution, the Cayuga dispersed producing roughly three separate enclaves." Cayuga XVI, 165 F.Supp.2d at 309. The first, referred to by this court in the Land Claim as "the Cayuga majority", settled at Buffalo Creek among the Seneca. Id. The second, referred to as "the Cayuga minority" settled at the eastern shore of Cayuga Lake after the war, and the third branch fled to Canada. Id. at 310.

In 1789, by a treaty with the State of New York, the Cayuga ceded "all their lands to the People of the State of New York forever" and retained "for their own use and cultivation" the roughly 64,000 acres which was the subject of the Land Claim. Id. at 315. Both the majority and minority branches ratified this treaty. Id. at 321. One year later, Congress enacted the Nonintercourse Act, which made illegal any land transaction with an Indian nation or tribe that was not ratified by the United States. See 25 U.S.C. § 177 (2004).

On November 11, 1794, the United States entered into a treaty with the Six Nations at Canandaigua, New York, wherein it, among other things, recognized the aforementioned land as the Cayuga's reservation. See Cayuga XVI, 165 F.Supp.2d at 328. Sachems or Chiefs from both the majority and minority Cayuga branches signed this treaty. Id. In 1795 and 1807, the subject land, previously

[8] The Six Nations in the Iroquois Confederacy were the Oneida, Tuscarora, Mohawk, Onondaga, Cayuga and Seneca Nations. See Cayuga Indian Nation of New York v. Cuomo, 758 F.Supp. 107, 109, n.1 (N.D.N.Y. 1991) ("Cayuga IV").

reserved to the Cayuga by the State of New York in 1789, and by the United States in 1794, was sold to the State by the Cayuga in contravention of the Nonintercourse Act. See id. at 331-332, 352-353; Cayuga III, 730 F.Supp. at 493.

Citing the 1795 and 1807 transactions as Nonintercourse Act violations, the Nation and five of its chiefs commenced the Land Claim in this court on November 19, 1980. Approximately one year later, the Tribe successfully intervened as a plaintiff to the action pursuant to Fed. R. Civ. P. 24. In support of its application for intervention, the Tribe argued that it "is the direct successor in interest to that branch of the Cayuga Nation of Indians which left New York State following the acts complained of in this action and has, thereby, an interest in this cause of action." Cayuga Indian Nation of New York v. Carey, Nos. 80-CV-930, 80-CV-960, 1981 U.S. Dist. LEXIS 15576, at *3-4 (N.D.N.Y. Nov. 9, 1981). This branch, referred to by the Tribe as "the Western Band", is the same branch the court later identified as "the Cayuga minority" which settled at the eastern shore of Cayuga Lake after the American Revolution.

The Nation, in opposing the Tribe's intervention, argued that the Tribe, as a conglomerate group composed of descendants of Cayugas, Senecas and other Iroquois Indians, could not, as a matter of law, acquire or assert an interest in the subject land of the Land Claim. See id. at *5. However, the Nation stated that it would not oppose intervention by descendants of the Western Band, if they could demonstrate continued tribal existence. See id. at *5, n.1. The court granted the Tribe's request, specifically noting that it was allowing intervention *without resolving the issue of whether the Tribe is a successor in interest to the historic Cayuga Indian Nation*, see id. at *10-11 (emphasis added), and concluded that "[w]here, as here, the threshold issue on intervention - whether the intervenor has

a protectable interest in the transactions at issue - is inextricably bound up with a substantial issue on the merits of the underlying case, the availability of permissive intervention under Rule 24 counsels in favor of granting intervention," id. at *11. In a later opinion regarding motions to dismiss by certain defendants, the court stated that its ruling allowing the Tribe's intervention "does not impair the right of [the Nation] or the defendants to challenge [the Tribe's] entitlement to a share of the recovery from this lawsuit, if any is ultimately awarded." Cayuga Indian Nation of New York v. Cuomo, 565 F.Supp. 1297, 1303 (N.D.N.Y. 1983) ("Cayuga I").

Four years later, the court had before it motions for summary judgment by defendants and a cross motion for summary judgment by the plaintiffs. Because the court was denying said motions, and because at that time the issue of ejectment had yet to be determined, there was no need for the court to address the parties' respective rights to the land. Therefore, the court stated, in a footnote, that it "need not resolve any dispute *at this time* between [the Nation] and [the Tribe] as to who has the actual right to claim interest in the land in question." Cayuga Indian Nation of New York v. Cuomo, 667 F.Supp. 938, 940, n.1 (N.D.N.Y. 1987) ("Cayuga II") (emphasis added).

As part of its summary judgment analysis, the court set forth the elements of a claim for a violation of the Nonintercourse Act. In order to establish such a claim, the court held,

> a plaintiff must show that: (1) it is or represents an Indian tribe within the meaning of the Act; (2) the parcels of land at issue are covered by the Act as tribal land; (3) the United States has never consented to the alienation of the tribal land; and (4) the trust relationship between the United States and the tribe has never been terminated or abandoned.

Cayuga II, 667 F.Supp. at 941 (citations omitted). The court went on to determine that, based on the affidavits of two officials from the BIA[9], which evidenced the federal government's recognition of the Tribe "as a successor tribe to the tribe with whom it treated in 1794", its tribal status, and thus the first element of a claim for violation of the Nonintercourse Act, was established as a matter of law. See id. at 942-43.

After finding that all but the third element of the Land Claim plaintiffs' claims were established as a matter of law, the court concluded that further factual development was needed regarding the issues of whether the United States ratified the conveyances and whether the subject land was abandoned by the plaintiffs. See Cayuga II, 667 F.Supp. at 945. Almost three years later, on plaintiffs' motion for partial summary judgment, the court granted same, finding that the United States did not ratify the 1795 or 1807 conveyances via the 1838 Treaty of Buffalo Creek, and therefore, said conveyances were in violation of the Nonintercourse Act. See Cayuga III, 730 F.Supp. at 493. Another year passed before the abandonment issue came before the court on cross-motions for partial summary judgment in Cayuga IV. See 758 F.Supp. at 109. There the court examined the two different types of Indian title to land: "aboriginal" title, which may be abandoned, and "recognized" or "reserved" title, which may only be divested by Congress. See id. at 110. After extensive textual analysis and interpretation of the Treaty of Canandaigua, the court concluded that the Land Claim plaintiffs "possess treaty-recognized title in the subject land" and therefore abandonment is

[9] At the time said affidavits were signed, Harry A. Rainbolt was the Area Director for the Eastern Are of the Bureau of Indian Affairs (BIA) and Theodore C. Krenzke was the Director of the Office of Indian Services of the BIA.

"not a legally sufficient defense" to their claims. Id. at 115.

Once the liability issues in the Land Claim were resolved, the court specifically invited the parties to file an interlocutory appeal before proceeding to the damages phase of the litigation. Ironically, the only party to accept the court's invitation was the Tribe, whose interests were not adversely affected by the court's prior rulings regarding liability, and thus its application for certification of an interlocutory appeal was necessarily denied.

B. Res Judicata

The doctrine of res judicata precludes a litigant from raising any defense or claim in a subsequent action that was or could have been raised in a prior action where the prior action involved the same parties as the subsequent action and resulted in an adjudication on the merits. See Bronx Household of Faith v. Board of Educ. of the City of New York, 331 F.3d 342, 362 (2d Cir. 1998); In re PCH Associates, 949 F.2d 585, 594 (2d Cir. 1991). While res judicata is a defense which can be waived, where a court is on notice that an issue before it has been decided previously, it may raise the res judicata defense sua sponte in order to avoid "unnecessary judicial waste." See Arizona v. California, 530 U.S. 392, 412-413, 120 S.Ct. 2304, 2318 (2000); United States v. Sioux Nation of Indians, 448 U.S. 371, 432, 100 S.Ct. 2716, 2749 (1980).

Here, defendants seek a conclusion that the Tribe is not a successor in interest to a signatory of the Treaty of Canandaigua. Should the court grant defendants' request, it would be re-visiting determinations made in the Land Claim, a decades-old case which is now before the Court of Appeals for the Second Circuit and is no longer within this court's jurisdiction. Municipal and State Defendants argue, however, that by ruling against the Tribe in the present

case, the court would not disturb its conclusions in the Land Claim, as the Tribe would still be able to assert a right to receive monetary redress for wrongs committed against it relating to the Land Claim area based on the 1795 and 1807 violations of the Nonintercourse Act. The Tribe's right to receive monetary redress for wrongs committed against it in 1795 and 1807 relating to the Land Claim area is inextricably intertwined with its alleged right to exercise sovereign jurisdiction over that land because the Tribe's right to both monetary damages as well as its alleged tribal sovereign jurisdiction of the land emanate from the 1794 Treaty of Canandaigua. In the Land Claim, not only did this court determine as a matter of law that the Tribe "is or represents an Indian tribe" within the meaning of the Nonintercourse Act based in part upon a BIA determination that the Tribe is a successor to the tribe with whom the United States treated in 1794, see Cayuga II, 667 F.Supp. at 942-43, this court also concluded that said 1794 treaty conferred recognized title in the subject property to the Tribe and the Nation, see Cayuga IV, 758 F.Supp. at 115. To allow the parties to re-litigate the Tribe's successorship at this late date would clearly create "unnecessary judicial waste" and as such, the court declines to do so.

Previously in the present action, the court applied the doctrine of res judicata to preclude the State and Municipal defendants from litigating the issue of whether, to the extent the Property is the Tribe's reservation land, it was disestablished in 1838 by the Treaty of Buffalo Creek. The court concluded that, because disestablishment is a defense which could have been raised in the Land Claim, it cannot now be raised as a defense in the present action. The Municipal Defendants argued, however, that the principles of res judicata should not apply against them because they were not a party to the damages phase of the Land

Claim, and thus there was no final judgment against them in that case. The court's reasoning for its determination that the judgment in the Land Claim was sufficiently final against all parties, including the Municipal Defendants, was read into the record at the September 25, 2003 hearing as follows:

> The municipal entities contend that this court should not give preclusive effect here to the court's finding of liability in the Cayuga land claim litigation because there has been no final judgment in that action as against them. It is accurate to state that no damage award has been entered against the municipal entities in that litigation. Nonetheless, in this court's opinion, the judgment in that case is sufficiently final so as to warrant applying the rules of res judicata here.
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> According to the Restatement, "'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." Restatement (Second) of Judgments § 13 (2003). Plainly, this court's rulings in the Cayuga case fall within that definition. As the parties to the present action should be fully aware, in 1999 this court had before it several motions, including one by the United States seeking separate trials and seeking to hold the State jointly and severally liable. The court denied the motion for joint and several liability. In so doing, the court observed that "ultimately" the State may "be held fully responsible for all of the damages which the Cayugas[10] may recover from [t]herein[]" because the State "provided the means through which many, if not all, of the non-State defendants derived title and have thus continued to hold the subject property in derogation of the Cayugas' rights to the same." Cayuga Indian Nation of New York v. Pataki, 79 F.Supp.2d 66, 73 (N.D.N.Y. 1999) ("Cayuga XI")(citation omitted).
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> As to the United States' motion for separate trials, the court granted same because, among other reasons, "the court is convinced that the interests of justice will best be served by allowing the plaintiffs to first proceed in a separate trial against the State[.]" Id. at

[10] Referring here and hereinafter to both the Tribe and the Nation.

76. In granting that motion, the court relied heavily upon representations by counsel for the various parties that, in essence, a judgment against the State for monetary damages would end the land claim litigation, at least insofar as this district court was concerned. For example, on several different occasions, the United States assured the court that it did not intend to seek a judgment against any of the other parties, including the Counties. The State echoed that view, "'for the record,' dispelling the notion that it intends to 'go against' the non-State defendants." Id. (citations omitted). Based upon the State's representations that it did not intend to "go against" either the individual landowners or any of the other defendants in the land claim action, and the representation by counsel for the Cayuga Nation that "as a practical matter if there is one trial against the State, that will be it[,]" the court held that "because the likelihood of future subsequent trials seems all but moot, the State's argument that separate trials should not be conducted because of the potential overlap in proof is wholly unfounded." Id. at 77.

Similarly, this court in the land claim action declared that "[t]he necessity of future trials seems highly unlikely, . . . , given the pledges by the Cayugas, the United States, and by the State, that once the matter is resolved as against the State, the parties just named will not be pursuing any further claims in connection with this litigation." Id. At that same time, the court recognized the possibility of future claims by the State against the Counties (and the other non-State defendants) for contribution and/or indemnification. See id. However, given the representations just quoted by the court and those repeatedly made to the court throughout the later years of the Cayuga land claim litigation, this court had no reason to believe that that judgment was anything but final. The fact that all of the defendants in the Cayuga land claim action, including the Counties, which are parties to this action, and the Towns of Aurelius and Montezuma which are also parties to this action, are parties to the appeal to the Second Circuit substantiates the view that the judgment therein is final for purposes of res judicata and/or collateral estoppel. This is not a situation presented by the line of cases to which the Counties are referring today where the appropriate relief has not yet been

> determined.[11] It has and the case is now on appeal to the Second Circuit. There are no outstanding issues as to damages or any form of relief in the Cayuga land claim action.

See Seneca-Cayuga Tribe of Oklahoma v. Town of Aurelius, et al., 03-CV-690 (N.D.N.Y.) (Tr. at 61:20-64:25, Sept. 25, 2003, Dkt. No. 81) (footnotes added).

Accordingly, the court declines to address the additional arguments advanced by one or all of the defendants regarding the issue of the Tribe's successor status, including the applicability of the Ninth Circuit successorship test, the alleged failure of the Tribe to receive benefits from the Treaty of Canandaigua, and the effect of various DOI and BIA determinations. The defendants' argument that the Tribe relinquished any reservation it may have in New York when it accepted a reservation first in Ohio and then in Oklahoma is also precluded under the doctrine of res judicata for the aforementioned reasons.

IV. CONCLUSION

After consideration of the record before it as well as the arguments advanced by all of the parties, the court concludes that defendants are precluded from re-litigating the issue of whether plaintiff, the Seneca-Cayuga Tribe of Oklahoma, is a successor in interest to the historic Cayuga Indian Nation that treated with the United States at Canandaigua, New York on November 11, 1794, because the issue was decided in the affirmative by this court in the Land Claim.

Accordingly, the court holds in abeyance a ruling on the claims before it for declaratory and injunctive relief pending a resolution of the remaining issues in relation thereto, to wit, whether the Property is Indian Country pursuant to 18

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[11] See Milltex Industries Corp. v. Jacquard Lace Co. Ltd., 922 F.2d 164, 167 (2d Cir. 1991) (citing Moore's Federal Practice § 131.30[2][c][I]).

U.S.C. § 1151(a), and if so, whether "exceptional circumstances" exist which would warrant the enforcement of state and local laws against the Tribe regarding its activities on the Property. As the parties have agreed, the TRO will remain in effect to preserve the status quo pending an outcome on the merits of this case.

IT IS SO ORDERED.

DATED: September 1, 2004
Syracuse, New York

Neal P. McCurn
Senior U.S. District Judge